



Federation of International
Civil Servants' Associations

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Tips and Information Newsletter for International Civil Servants

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Alex Haines successful against IMO's Applications for Interpretation of Judgment before the UN Appeals Tribunal, New York

On Friday 19th November 2021, the UNAT in New York – sitting as a full bench (*i.e.*, all seven judges) – released its 29th October 2021 Judgment [No. 2021-UNAT-1148](#) in the case of **Fogarty, Sheffer, Spinardi, Dispert and Hoe (Respondents) v Secretary-General of the IMO (Applicant)** (the “2021 Judgment”).

Mr Haines represented Mr Sheffer, Ms Dispert and Ms Hoe.

The 2021 Judgment on interpretation is relevant to the international justice systems of several international organisations beyond the IMO and reaffirms the UNAT's 2019 landmark judgments (the “2019 Judgments”) in which Mr Haines, assisted by Stephen Butler, was instructed by Mr Sheffer, Ms Dispert and Ms Hoe.

In its 2021 Judgment delivered last week, the UNAT found that the IMO's application for interpretation disclosed “*some misunderstanding and, in some respects, seeks legal advice*” and agreed with Mr Haines that the landmark 2019 judgments do not set aside any of the IMO Staff Rules; they merely directed the Staff Appeals Board (the “SAB”) – the IMO's first instance – to act with appropriate authority and to clarify the basis of its jurisdiction and the obligations imposed on the IMO by a UNAT judgment are “*executable on the date it receives notice*”. The UNAT also found that part of the IMO's pleading “*with the greatest of respect, displays a measure of conceptual confusion that may lie at the heart of these unmeritorious applications for interpretation and probably accounts for the decision to bring them. The reasoning discloses elemental errors about the nature of the dispute resolution system, a failure to grasp the principle of legality and a misapprehension of the jurisdictional problem facing the SAB*”.

The landmark 2019 Judgments

In the cases of *Sheffer v Secretary-General of the IMO* (Judgment No. [2019-UNAT-949](#)) and *Dispert & Hoe v Secretary-General of the IMO* (Judgment [No. 2019-UNAT-958](#)), the UNAT held that there were fundamental problems with the

manner in which the IMO had dealt with the Appellants' claim for reclassification. A primary concern was that the internal 'decisions' appealed did not conform to the IMO's jurisdictional requirements under Article XI of the IMO Staff Regulations and Rules.

Article XI of the IMO's Staff Regulations and Rules is based on the terms of the Agreement between the UN and the IMO which took effect on 1st July 2009 extending the jurisdiction of the UNAT to the IMO and, in turn, to Article 2(10) of the Statute of the UNAT which governs its jurisdiction and powers.

The SAB only issued recommendations by advising the IMO's Secretary-General who could not himself be regarded as a neutral part of the process, not least because he is both the employer's representative and the original decision-maker at whom the appellants' appeal were directed.

The UNAT was not satisfied that the essential elements were present to have constituted a 'decision' by the SAB. In order to ensure compliance with the jurisdictional requirements of the IMO's Regulations and Rules, the case was remanded back to the SAB under Article 2(10) of the UNAT Statute in order that it issue a decision on the appeals against the original administrative decision issued by the Secretary-General.

The 2021 SAB Decisions

Following the constitution of a new SAB chaired by an external judge, Mr Haines successfully represented Mr Sheffer, Ms Dispert and Ms Hoe earlier this year.

The UN System of Justice

The UNAT is the second and final instance of appeal within the UN internal system of justice. The UNAT was established by the General Assembly in 2009 as part of the new UN internal justice system (replacing the old United Nations Administrative Tribunal).

As the second level appellate review tribunal within the UN's justice system, the UNAT reviews (1) appeals against judgments rendered by the UN Dispute Tribunal ("UNDT"), (2) appeals against judgments rendered by the Dispute Tribunal of the UN Relief and Works Agency for Palestine Refugees in the Near East ("UNRWADT"), as well as (3) appeals of decisions taken by the Standing Committee acting on behalf of the UN Joint Staff Pension Board ("UNJSPB") and (4) appeals of decisions taken by organisations, agencies and entities that have accepted UNAT's jurisdiction, including the International Court of Justice ("ICJ"), the International Tribunal for the Law of the Sea ("ITLOS") and the IMO.

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